UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BOBBY FARID HADID,

Plaintiff,

-v.-

THE CITY OF NEW YORK, et al.,

Defendants.

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**DECISION & ORDER**
15-CV-19 (WFK) (RER)

**WILLIAM F. KUNTZ, II, United States District Judge:**

On January 5, 2015, Plaintiff Bobby Farid Hadid ("Plaintiff") filed a Complaint against The City of New York, Raymond W. Kelly, David Cohen, Thomas Galati, William Bratton, John Miller, Charles Campisi, Christopher Broschart, Charles Hynes, Melissa Carvajal, and Elizabeth Moehle (collectively "Defendants") alleging violations of his rights pursuant to, *inter alia*, 42 U.S.C. §§ 1983 and 1985 for abuse of process, false arrest, malicious prosecution, and denial of Plaintiff's right to a fair trial. ECF No. 1 ("Complaint"). On November 30, 2015, the Court granted Defendants' motion to dismiss several of Plaintiff's claims, ECF No. 51, and on April 22, 2016, the Court denied Plaintiff's motion for reconsideration and/or to amend the complaint, ECF No. 84. Defendants now move for summary judgement on Plaintiff's remaining claims pursuant to Fed. R. Civ. P. 56. For the reasons that follow, Defendants' motion is GRANTED.

## BACKGROUND

### A. Relevant Factual Background

Plaintiff joined the New York City Police Department ("NYPD") in July 2002. ECF No. 100 ("Combined Rule 56.1 State.") ¶ 1. In February 2007, Plaintiff was assigned to the NYPD's Joint Terrorism Task Force ("JTTF"). *Id.* ¶ 7. As a member of the JTTF, Plaintiff served as an interpreter for a homicide investigation in November 2007, in which the main suspect, Marien Kargu, had fled to France. *Id.* ¶ 10. Plaintiff's role in the investigation consisted of travelling to France with two NYPD detectives and serving as a French translator during the questioning of Kargu and his girlfriend, Leila Grison. *Id.* ¶ 11. On November 15, 2007, Plaintiff received a private phone call from Grison and agreed to meet with her in person. *Id.* ¶ 24. Plaintiff met with Grison at a "Chucky Cheese-type" family amusement park in Paris on November 18, 2007, and spoke with her for approximately 20 minutes. *Id.* ¶¶ 28-29. Plaintiff never informed any member of the NYPD that he had spoken with Grison privately by phone or in person. *Id.* ¶ 32.

From about January 2008 to May 2009, Plaintiff worked in the Citywide Debriefing Unit ("CDU") of the Intelligence Division of the NYPD, where he conducted interviews of arrestees and parolees to obtain information regarding terrorist or criminal activity. *Id.* ¶¶ 43, 48.

In October 2010, Plaintiff was called to testify in the criminal trial of Marien Kargu regarding the translation work he performed in France in 2007. *Id.* ¶ 107. During his testimony, Plaintiff was confronted with evidence that he had communicated with Grison privately. *Id.* ¶ 115.

On April 12, 2011, Plaintiff was indicted in Kings County Supreme Court on two felony counts of Perjury in the Second Degree and two felony counts of Perjury in the First Degree stemming from his testimony in the Kargu trial. *Id.* ¶ 119. On October 25, 2012, the trial judge found Plaintiff guilty of Perjury in the First Degree, a felony. *Id.* ¶ 127. Immediately upon Plaintiff's conviction, his employment with the NYPD was terminated as a matter of law pursuant to the New York Public Officers Law § 30(1)(e). *Id.* ¶ 128.

In 2014, Plaintiff met with *New York Times* reporter Jack Goldstein and told him, *inter alia*, that the CDU had targeted Muslims and individuals with "Arabic sounding names" for its investigations. *Id.* ¶ 142. On May 10, 2014, the *Times* published this information in an article by Goldstein titled "New York Police Recruit Muslims to be Informers." *Id.* ¶ 132.

On October 8, 2014, Plaintiff's 2012 perjury conviction was reversed and the indictment was dismissed as a matter of law by the New York State Appellate Division, Second Department. *Id.* ¶ 147. On October 21, 2014, Plaintiff sent a letter to Defendant William

Bratton ("Bratton"), Police Commissioner of the City of New York, seeking to be reinstated to his former post. *Id.* ¶ 148. Plaintiff submitted a second letter to Defendant Bratton on November 25, 2014. *Id.* ¶ 149. Plaintiff was ultimately granted a reinstatement hearing, which was presided over by Robert Vinal, NYPD Assistant Deputy Commissioner for Trials, on January 13 and 14, 2016. *Id.* ¶ 150. At the close of the hearing, Vinal concluded that Plaintiff had exhibited poor judgment in privately communicating with Grison, and further found there to be credible evidence that Plaintiff had misused an NYPD computer, used an NYPD vehicle without permission, and failed to maintain an activity log. *Id.* ¶¶ 162-171. Accordingly, Vinal recommended that Plaintiff's application for reinstatement be denied. *Id.* ¶ 172. On June 14, 2016, Defendant Bratton accepted Vinal's recommendation and denied Plaintiff's application for reinstatement. *Id.*

**B. Procedural History**

Plaintiff filed the instant Complaint on January 5, 2015, asserting the following causes of action against Defendants: (1) Violation of First Amendment Rights under 42 U.S.C. § 1983, (2) Malicious and Fraudulent Prosecution under 42 U.S.C. § 1983, (3) Malicious Abuse of Process under 42 U.S.C. § 1983, (4) Conspiracy to Violate Plaintiff's Civil Rights under 42 U.S.C. § 1983, (5) Conspiracy to Violate Plaintiff's Civil Rights under 42 U.S.C. § 1985(3), (6) Violation of Plaintiff's Right to a Fair Trial under 42 U.S.C. § 1983, (7) Violation of Substantive and Procedural Due Process under 42 U.S.C. § 1983, (8) Municipal Liability under 42 U.S.C. § 1983, (9) Malicious Prosecution under New York State law, (10) Malicious Abuse of Process under New York State law, and (11) False Arrest under New York State law. Complaint ¶¶ 76-130.

On October 2, 2015, Defendants filed a fully-briefed motion to dismiss this action. ECF No. 37. On November 30, 2015, the Court issued a Decision and Order granting Defendants' motion as to all claims except for Plaintiff's First Amendment retaliation claims occurring on or after January 5, 2012. ECF No. 51. On January 29, 2016, Plaintiff filed a fully-briefed motion for reconsideration, or, in the alternative, to amend the complaint. ECF No. 78. On April 22, 2016, the Court issued a Decision and Order denying Plaintiff's motion in its entirety. ECF No. 84. On September 6, 2016, Defendants filed the instant motion for summary judgment on the remaining claims, ECF No. 95, as well as a memorandum in support, ECF No. 98 ("Mem."); Plaintiff filed a memorandum in opposition, ECF No. 101 ("Opp."); and Defendants filed a reply memorandum in further support, ECF No. 102 ("Reply"). For the reasons stated below, the Court hereby GRANTS Defendants' motion.

## LEGAL STANDARD

A court "shall grant summary judgment if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The role of the court is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried. In determining whether summary judgment is appropriate, this Court will construe the facts in the light most favorable to the non-moving party and must resolve all ambiguities and draw all reasonable inferences against the movant." *Brod v. Omya, Inc.*, 653 F.3d 156, 164 (2d Cir. 2011) (internal quotation marks and citations omitted). No genuine issue of material fact exists "where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Lovejoy-Wilson v. NOCO Motor Fuel, Inc.*, 263 F.3d 208, 212 (2d Cir. 2001) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

If the moving party satisfies this burden, the non-moving party must "make a showing sufficient to establish the existence of [each] element to that party's case . . . since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). If the evidence produced by the non-moving party "is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986) (internal citations omitted). With these principles in mind, the Court turns to the analysis of the motion for summary judgment.

**ANALYSIS**

This Court now considers the sole issue remaining in this action: whether Defendant Bratton rejected Plaintiff's application for reinstatement to the NYPD because of Plaintiff's protected speech to the New York Times.[1] To state a First Amendment retaliation claim as a private citizen, Plaintiff must demonstrate: (1) he has an interest protected by the First Amendment, and (2) Defendants' actions were motivated or substantially caused by his exercise of that right. *See Hadid v. City of New York, et al.*, 15-CV-19, 2015 WL 7734098, at *10 (E.D.N.Y.) (Kuntz, J.) (citing *Curley v. Vill. of Suffern*, 268 F.3d 65, 73 (2d Cir. 2001)). A causal connection may be demonstrated in two ways: "(1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant." *Gordon v. New York City Bd. Of Educ.*, 232 F.3d 111, 117 (2d Cir. 2000). Construing the facts in the light most favorable to the non-moving party, the Court finds that

[1] Plaintiff is correct in acknowledging that the Court dismissed his claims concerning his internal speech as time-barred in its November 30, 2015 Decision and Order.

Plaintiff cannot demonstrate a causal connection between his communications with the press and Defendant Bratton's denial of reinstatement.

The record in this case contains no evidence that the denial of Plaintiff's reinstatement to the N.Y.P.D. was substantially motivated by his speech to the *New York Times*. Plaintiff's primary basis for his claim is that Deputy Commissioner Miller, an N.Y.P.D. official, attempted to discredit Plaintiff by falsely characterizing him as a convicted perjurer in front of Defendant Bratton at a November 2014 meeting in the wake of the publication of Goldstein's *New York Times* article. Opp. at 21-23. This carries little weight for two reasons. First, the parties do not dispute that Plaintiff was convicted of perjury—a conviction which had not yet been reversed at the publication of the *Times* article, and which was reversed a mere month before Miller's comment. Second, Miller had no involvement in Plaintiff's reinstatement hearing. Plaintiff's hearing was instead presided over by Assistant Deputy Commissioner Venal, whom Plaintiff has not alleged to have harbored any retaliatory animus. Venal conducted a thorough two-day reinstatement hearing at which Plaintiff was represented by counsel and had the opportunity to present evidence and cross-examine witnesses. At the close of the hearing, Venal issued a thorough and reasoned recommendation that made no reference to Plaintiff's speech to the *New York Times*. This record leads the Court to conclude that Bratton's approval of Venal's recommendation to deny Plaintiff's application for reinstatement was not motivated—let alone *substantially* motivated—by Plaintiff's speech to the *Times*.

Even assuming Plaintiff could make a *prima facie* showing of a causal connection between his speech and the denial of his reinstatement application, no reasonable jury would conclude that Defendants would have reinstated Plaintiff absent his speech. Upon Plaintiff's perjury conviction, his employment was terminated as a matter of law. When his conviction was reversed, Plaintiff was not entitled to reinstatement as a matter of right; rather, he was essentially applying to the N.Y.P.D. anew. In evaluating Plaintiff's new application, Defendants were entitled to consider the strengths and weaknesses Plaintiff displayed during his previous tenure as an N.Y.P.D. officer. Venal's report indicated that Plaintiff had engaged in conduct evincing poor judgment, and, for that reason, Venal recommended the denial of Plaintiff's application for reinstatement. Even construing the facts in the light most favorable to the Plaintiff, this Court does not see a question of fact concerning the separate and independent basis for denial presented by Venal's report. Accordingly, Defendants are entitled to judgment as a matter of law.

## CONCLUSION

The Court hereby GRANTS Defendants' motion for summary judgment in its entirety. The Clerk of Court is respectfully directed to close this case.

**SO ORDERED.**

s/ WFK

HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: December 16, 2016
Brooklyn, New York